

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

RONALD CARRAL

VS.

PLAINTIFF

CIVIL ACTION NO. 3:16-cv-393-CWR-LRA

**AVANT, INC., CAPITAL ONE BANK
(USA), N.A., CASH CENTRAL OF
MISSISSIPPI, LLC, and LENDINGCLUB
CORPORATION**

DEFENDANTS

NOTICE OF REMOVAL

Pursuant to Local Rule 5(b) and 28 U.S.C. § 1446(a), Defendant Cash Central of Mississippi, LLC (“CCM”) hereby gives notice of removal of the proceeding styled *Ronald Carral v. Avant, Inc., Capital One Bank (USA), N.A., Cash Central of Mississippi, LLC, and LendingClub Corporation*, Cause No. 16-255, in the Circuit Court for the First Judicial District of Hinds County, Mississippi, to the United State District Court for the Southern District of Mississippi, Northern Division. The following is a short, plain statement of the grounds for removal:

I. INTRODUCTION

1. Plaintiff Ronald Carral (“Plaintiff”) commenced this action by filing his Complaint against CCM, Avant, Inc., Capital One Bank (USA), N.A., and LendingClub Corporation (collectively the “Defendants”) on April 26, 2016, in the Circuit Court for the First Judicial District of Hinds County, Mississippi. (See Complaint, attached hereto as **Exhibit A**.)
2. This case is properly removable, pursuant to 28 U.S.C. § 1441, which provides in pertinent part as follows:

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

28 U.S.C. § 1441(a).

3. Accordingly, this matter is properly removable under 28 U.S.C. § 1441 as the United States District Court has original jurisdiction over this case under 28 U.S.C. § 1331.

II. FEDERAL QUESTION JURISDICTION EXISTS OVER THIS ACTION

4. This case is properly removable, pursuant to 28 U.S.C. § 1331, which provides that this Court has “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Removal jurisdiction based upon a federal question exists when a federal question is presented on the face of a plaintiff’s complaint. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

5. Plaintiff’s Complaint, which alleges a single cause of action against the Defendants under the Telephone Consumer Protection Act (“TCPA”), asserts claims arising under the Constitution, laws or treaties of the United States. *See 47 U.S.C. § 227; Schopp v. Fora Financial Holdings, LLC*, 2016 WL 878325, *2 (E.D. Tex. 2016) (citing *Mims v. Arrow Fin. Servs.*, LLC, 132 S. Ct. 740, 753, 181 L. Ed. 2d 881 (2012) (noting the fact that state and federal courts have concurrent jurisdiction over TCPA claims does not divest the Court of federal question jurisdiction or preclude removal)).

6. Because Plaintiff asserts claims arising under, and for alleged violations of, federal law, this Court has federal question jurisdiction over Plaintiff’s claims, pursuant to 28 U.S.C. §§ 1331 and 1441.

III. ADOPTION AND RESERVATION OF DEFENSES

7. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of any of CCM's rights to assert any affirmative defenses, including, but not limited to, the defenses of: (1) lack of jurisdiction over the person; (2) improper venue; (3) insufficiency of process; (4) insufficiency of service of process; (5) improper joinder of claims and/or parties; (6) failure to state a claim; (7) the mandatory arbitrability of some or all of the claims; (8) failure to join indispensable parties; or (9) any other pertinent defense available under Mississippi law and/or Fed. R. Civ. P. 12, any state or federal statute, or otherwise. CCM also reserves the right to demand arbitration pursuant to any contractual agreements with the Plaintiff and the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*

IV. PROCEDURAL REQUIREMENTS

8. This case is a civil action within the meaning of the Acts of Congress relating to the removal of cases.

9. On April 29, 2016, CCM received a copy of the summons and complaint. This Notice of Removal is filed within thirty days after initial receipt by Defendant of the complaint and summons and is thus timely under 28 U.S.C. § 1446(b).

10. The Circuit Court for the First Judicial District of Hinds County, Mississippi is located within the Southern District of Mississippi, Jackson Division.

11. In accordance with 28 U.S.C. §1446(a), a copy of all process and pleading(s) received by CCM, as of this date, is attached to this Notice of Removal as **Exhibit A**.

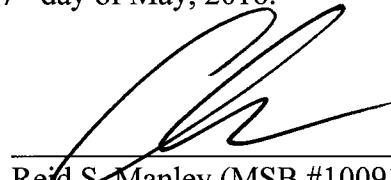
12. In accordance with Local Rule 5(b), a copy of the entire state court record in the format required by the Administrative Procedures for Electronic Case Filing for this district will be filed within 14 days.

13. In accordance with 28 U.S.C. §1446(d), Plaintiff Ronald Carral (“Plaintiff”) is being served with a copy of this Notice of Removal. Additionally, a copy of this Notice of Removal is being filed with the Circuit Court for the First Judicial District of Hinds County, Mississippi.

14. Defendants Avant, Inc., Capital One Bank (USA), N.A., and LendingClub Corporation consent to this removal, and will file separate Joinders in accordance with 28 U.S.C. §1446(b)(2).

WHEREFORE, PREMISES CONSIDERED, Defendant Cash Central of Mississippi, LLC prays that the Court will take jurisdiction of this action and issue all necessary orders and process to remove this action from the Circuit Court for the First Judicial District of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi, Northern Division.

RESPECTFULLY SUBMITTED, this the 27th day of May, 2016.



Reid S. Manley (MSB #100916)
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CERTIFICATE OF SERVICE

I, Christopher D. Meyer, hereby certify that I have this day caused to be mailed by United States mail, postage prepaid, a true and correct copy of the above and foregoing Notice of Removal to:

Christopher E. Kittell, Esq.
Kittell Law Firm
P.O. Box 568
Hernando, MS 38632

This the 27th day of May, 2016.



OF COUNSEL